

Decision 02-10-035

October 17, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company
(E 3338-E) for Authority to Institute a Rate
Stabilization Plan with a Rate Increase and End of
Rate Freeze Tariffs.

Application 00-11-038
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric
Company to Adopt a Rate Stabilization Plan (U 39 E).

Application 00-11-056
(Filed November 22, 2000)

Petition of THE UTILITY REFORM NETWORK for
Modification of Resolution E-3527.

Application 00-10-028
(Filed October 17, 2000)

ORDER MODIFYING DECISION 02-09-045 AND
DENYING APPLICATION FOR REHEARING

Decision (D.) 02-09-045 clarified Ordering Paragraph 4 of D.02-02-052, the decision implementing the California Department of Water Resources' (DWR) revenue requirement for the period January 17, 2001 through December 31, 2002. D.02-02-052 established charges to recover that revenue requirement. Ordering Paragraph 4 states:

The cents per kWh charges referenced in Ordering Paragraph 3 above shall remain in effect for each utility through December 31, 2002 (unless DWR indicates an earlier adjustment is needed), and shall provide recovery of the DWR revenue requirement applicable through that period. Updated DWR charges shall be scheduled to take effect for customers in each of the utilities' service territories beginning on January 1, 2003, covering the DWR revenue requirement for

the forecast period from January 1, 2003 through December 31, 2003.

In order to alleviate concerns conveyed by the State Treasurer's Office about a possible gap in the ongoing revenue flow if the previously set charges could be considered to expire on January 1, 2003, the Commission modified the first sentence of this paragraph to read that the charges shall remain in effect "until further order of the Commission."

On September 30, 2002, PG&E filed an Application for Rehearing of D.02-09-045. PG&E argues that Water Code Section 80134(a) does not appear to permit DWR to maintain its annual revenue requirements and rates in effect beyond each calendar year without revising those revenue requirements and its resulting charges. PG&E further argues that in order to avoid violating Section 801034(a), DWR should request that the Commission issue an interim order revising DWR's charges, subject to retroactive "true up" of that order or refund based on final changes in DWR's charges that are adopted subsequently in this proceeding. Moreover, PG&E contends that DWR has not yet fully complied with all lawful procedures for determining and communicating its 2003 revenue requirement to the CPUC. This is allegedly because the reasonableness of DWR's 2003 revenue requirement under Water Code Section 80110 is still subject to formal requests for reconsideration by PG&E and Southern California Edison filed at DWR which have yet to be acted on by DWR. In a footnote, PG&E further claims that the Decision appears to be an unlawful revision to DWR's 2001-2002 revenue requirement because DWR has not determined that the revision is "just and reasonable" in compliance with the procedural requirements of Water Code Section 80110 and 80134(a), the California Administrative Procedure Act, and DWR's emergency regulations implementing the procedural requirements of Section 80110. PG&E further claims that the Decision violates Public Utilities Code sections 1705 and 1737 because it does not

discuss or address the substance of PG&E's comments on the proposed decision filed on September 17, 2002, which raise the same issues identified above.¹

We have reviewed PG&E's Application for Rehearing and do not find any grounds for granting rehearing. The Decision does not violate Water Code section 80134 or 80110. Water Code section 80134 requires DWR to submit its Revenue Requirement to the Commission "at least annually." As discussed in the Decision, DWR submitted its 2003 revenue requirement to the Commission on August 29, 2002, and has fulfilled its obligations under Water Code section 80134. The act of determining a revenue requirement, however, is distinct from the act of setting electricity charges. The Commission has exclusive authority under the Act to set electric charges to recover DWR's costs, as well as sole authority to establish the procedures it will use to set electric charges. Nothing in section 80134 precludes the Commission from establishing charges that are to remain in effect beyond the calendar year. The fact that section 80134 requires DWR to determine "at least annually" its revenue requirement does not lead to the conclusion that the charges set by the Commission expire at the end of the calendar year. This result is not contemplated by the Act. In fact, section 80110 states that DWR shall be entitled to recover its revenue requirement "*at the times necessary*" to enable it to comply with section 80134. (Emphasis added.) As discussed in the Decision, in order for DWR to comply with section 80134 there cannot be any inadvertent gap in DWR's revenue recovery.

PG&E argues that the Commission could have taken other steps to address this problem, including issuing an interim order adopting interim 2003 charges or revised 2001-2002 charges for DWR subject to future adjustment based on further proceedings in the docket. However, the fact that the Commission could have used these means does not

¹ PG&E also argues that because DWR is not a public utility, none of the Public Utilities Code (except 451) applies to Commission actions in setting DWR charges. While it is true that DWR is not a public utility, it does not follow that all other portions of the Public Utilities Code are inapplicable to Commission actions in setting DWR charges.

make the approach it used illegal. Moreover, it is not clear from PG&E's Comments what basis the Commission would have to issue these interim orders. PG&E's suggested approaches would still require a future order from the Commission and would not necessarily have alleviated any uncertainty surrounding a potential DWR funding gap. The approach taken by the Commission ensures that no such gap exists. We will modify the Decision to clarify our reasoning in response to PG&E's Comments.

Furthermore, DWR's action on PG&E and So Cal Edison's requests for reconsideration of the reasonableness of DWR's 2003 revenue requirement is not relevant here, as the Decision does not implement DWR's 2003 revenue requirement. Moreover, this point is now moot since on October 8, 2002, DWR issued its Response to Requests for Reconsideration of August 16, 2002 Determination of Revenue Requirements, which denied PG&E and Edison's requests for reconsideration. Finally, PG&E's argument that the Decision constitutes an unlawful revision to DWR's 2001-2002 revenue requirement is also without merit. The Decision does not even revise the electric charges set to recover that revenue requirement.

For the reasons stated above, we deny PG&E's Application for Rehearing of D.02-09-045. We will, however, modify the Decision to address the alternate approaches raised by PG&E in its September 17 Comments. In so modifying, we find that PG&E's arguments concerning Public Utilities Code sections 1705 and 1737 are moot.

IT IS ORDERED that:

1. Decision 02-09-045 shall be modified as follows:
 - a. The last sentence of the last paragraph on page 5 (continuing to page 6) shall be deleted and replaced with the following language: "PG&E argues that Water Code Section 80134(a) does not appear to permit DWR to maintain its annual revenue requirements and charges in effect beyond each calendar year without revising those revenue requirements and its resulting charges. PG&E also contends that DWR has not yet fully complied with all lawful procedures for determining and communicating its 2003 revenue requirement to the CPUC because the reasonableness of

DWR's 2003 revenue requirement is still subject to formal requests for reconsideration by PG&E and Southern California Edison. This modification to D.02-02-052 does not violate Water Code section 80134 or 80110. Water Code section 80134 requires DWR to submit its Revenue Requirement to the Commission "at least annually." DWR has submitted its 2003 revenue requirement to the Commission and has fulfilled its obligations under Water Code section 80134. The act of determining a revenue requirement, however, is distinct from the act of setting electricity charges. The Commission has exclusive authority under the Act to set electric charges to recover DWR's costs. Nothing in section 80134 precludes the Commission from establishing charges that are to remain in effect beyond the calendar year. The fact that section 80134 requires DWR to determine "at least annually" its revenue requirement does not lead to the conclusion that the charges set by the Commission expire at the end of the calendar year. PG&E further argues that the Commission should take other steps to address the potential funding gap problem, including issuing an interim order adopting interim 2003 charges or revised 2001-2002 charges for DWR subject to future adjustment based on further proceedings in the docket. However, it is not clear from PG&E's comments what basis the Commission would have to issue these interim orders. Moreover, PG&E's alternate recommendations would still require a future order from the Commission and would not immediately alleviate any uncertainty surrounding a potential DWR funding gap. The approach taken by the Commission ensures that no such gap exists."

- b. The following Conclusion of Law shall be inserted after Conclusion of Law No. 1: "Nothing in Water Code section 80134 precludes the Commission from establishing DWR charges that are to remain in effect beyond the calendar year." The remaining Conclusions of Law shall be renumbered accordingly.

2. Application for Rehearing of Decision 02-09-045, as modified, is hereby denied.

This order is effective today.

Dated October 17, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

Commissioner Carl W. Wood, being
necessarily absent, did not participate